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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,290	10/30/2001	Jacques Granger	01183	4898

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DENNISON, SCHULTZ, DOUGHERTY & MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/926,290	Applicant(s) GRANGER ET AL.	
	Examiner Niki M. Eloshway	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-32 and 35-44 is/are rejected.
- 7) ☒ Claim(s) 33 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 26 is considered vague and indefinite because of the phrase "optionally of a constant radius" found in lines 2-3. It is unclear if applicant is claiming that the rotation surface has a constant radius.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23-30, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battagazzore (U.S. 6,276,544) in view of Trout (U.S. 5,749,484) and Granger (U.S. 6,403,173). Battagazzore discloses the claimed invention except for the pilfer-proof means of the inner part and except for the outer part being made of metal. Trout teaches that it is known to provide a cap with a pilfer-proof means on the inner part (see element 50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap of Battagazzore with the inner part having pilfer-proof means, as taught by Trout, in order to indicate tampering.

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Granger et al. teaches that it is known to form an outer part of metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified cap of Battegazzore with the outer part being metal, in order to give the outer part the strength characteristic of metal.

Regarding claim 28, the modified cap of Battegazzore discloses the claimed invention except for the outer part being attached by gluing. Granger et al. teaches that it is known to glue an outer part to the insert. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified cap of Battegazzore with the outer part being glued to the insert, in order to fasten the elements together more securely.

5. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Battegazzore (U.S. 6,276,544) in view of Trout (U.S. 5,749,484) and Granger (U.S. 6,403,173), as applied to claim 30 above, and further in view of Ackermann (U.S. 6,776,311). The modified Battegazzore cap does not teach that the outer part is brushed or anodized. Ackermann teaches that it is known to provide a closure element which is anodized aluminum (see col. 1 lines 45-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure of Battegazzore with the outer part being anodized aluminum, as taught by Ackermann, in order to give the closure a more decorative appearance.

6. Claims 35-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battegazzore (U.S. 6,276,544) in view of Trout (U.S. 5,749,484) and Granger (U.S. 6,403,173), as applied to claim 23 above, and further in view of Luenser et al. (U.S. 4,462,502). The modified cap of Battegazzore discloses the claimed invention except for the added seal. Luenser et al. teaches that it is known to provide a cap with an added seal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified cap of Battegazzore with the added seal of Luenser et al., in order to allow the user to replace the seal without having to replace the inner part.

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Regarding claim 41, the Battegazzore reference does not mention the thickness of the inner head. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the inner head of the Battegazzore cap with a thickness of 0 to 0.5mm, since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

7. Claims 33 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed May 13, 2004 have been fully considered but they are not persuasive. Applicant argues that the references, as a whole, "do not disclose or suggest a metal outer cap which conceals pilfer-proof means which forms part of an inner cap before the first opening of the receptacle, and exposes the pilfer-proof means after the first opening of the receptacle". The examiner disagrees with this position. The primary reference of Battegazzore teaches an outer skirt which completely covers the inner skirt. When modified by Trout the inner skirt of Battegazzore includes a tamper ring at the bottom thereof, which would also be covered by the outer skirt. The outer skirt of Battegazzore can be moved axially after the initial opening of the container, as stated in col. 4 lines 1-5 of Battegazzore. The guarantee strip of the modified invention would be as visible as applicant's guarantee strip in the embodiment having an outer ring attached to the outer skirt.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the teaching of an outer skirt which is capable of covering the inner skirt.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

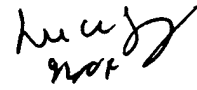
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or

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relating to the status of this application should be directed to the 3700 Customer Service Office
at (703) 306-5648.



Niki M. Eloshway/nme
Patent Examiner
August 29, 2004



LEE YOUNG
SUPERVISORY PATENT EXAMINER
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